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AKHIL BHARTIYA UPBHOKTA CONGRESS

v.

STATE OF MADHYA PRADESH & ORS

B

SUPREME COURT, MADHYA PRADESH
(2011) 5 SUPREME COURT CASES 29
GS SINGHVI SCJ
AK GANGULY SCJ
[CIVIL APPEAL NO: 2965-2011]†

C

6 APRIL 2011

[Editor's note: The publication of this judgment, in the format it was published, was undertaken pursuant to an understanding reached between *CLJ* and Eastern Book Company, the publisher
D of the *Supreme Court Cases* (SCC) in India. We trust that the case - for ruling that the State is not at liberty to give largesse such as land, quotas, permits and licenses to any person on the sweet whims of the political entities or its officers, that in doing so it was very much bound by the rules of equity and justice, and that
E any such exercise of discretion, if found to be arbitrary, discriminatory and an act of favouritism or nepotism, is liable to be treated as violating the equality clause in art. 14 of the Constitution of India - is an eye-opener, not least for members of the executive branch of the State.]

F ***[CONSTITUTIONAL LAW]*** *Constitution of India - Article 14 - Allotment of land, grant of quotas, permits, licences, etc. - Norms for - Held, must be founded on a sound, transparent, discernible and well-defined policy - Policy should be made known to public by publication in Official Gazette and other recognised modes of publicity - Non-*
G *discrimination and non-arbitrariness in policy implementation/execution - Necessity of fairness and equity in action - Exercise of discretion to be uninfluenced by favouritism or nepotism, emphasised*

[CONSTITUTIONAL LAW] *Constitution of India - Article 14 -*
H *Allotment of land by State or its instrumentalities/agencies - Policy of allotting land on basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by State*

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† Arising out of SLP (C) No. 25509 of 2009. From the Judgment and Order dated 10 March 2008 of the High Court of Judicature Madhya Pradesh at Jabalpur in WP No. 10617 of 2007.

- Validity of - Held, such policy is liable to be treated as arbitrary, discriminatory and an act of favouritism and nepotism violating soul of equality clause in art. 14 - Allotment of land to institutions/organisations engaged in educational, cultural, social or philanthropic activities or rendering service to society must be done in a manner consistent with doctrine of equality whether by auction/otherwise - Government may allot land at a fixed price but in that case too allotment must be preceded by an exercise consistent with art. 14

Held:

What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, *etc*. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State. (para 65)

New India Public School v. HUDA [1996] 5 SCC 510, relied on
Seven Seas Educational Society v. HUDA, AIR 1996 P&H 228: [1996] 113 PLR 17, held, approved

There cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by

A the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in art. 14 of the Constitution. (para 66)

B This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to C observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating D therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome E exercise consistent with art. 14 of the Constitution. (para 67)

[CONSTITUTIONAL LAW] *Constitution of India - Article 14 and Preamble - Allotment of land to a body/organisation/institution carrying tag of caste, community or religion - Impermissibility of - Held, such* F *allotments are contrary to the idea of a secular democratic republic and also fraught with grave danger of dividing society on caste or communal lines - Allotment of land to such bodies/ organisations/institutions on political considerations, by favouritism and/or nepotism or with a view to nurture a vote bank is constitutionally impermissible (para 68)*

G ***[CONSTITUTIONAL LAW]*** *Constitution of India - Article 14 - Allotment of land by State functionaries based on political considerations, favouritism and nepotism, held, illegal, and quashed - Allotment of 20 acres of Nazul land by Government of Madhya Pradesh to R-5 training institute/memorial trust without any advertisement and without inviting* H *other similarly situated organisations/institutions to participate in allotment process - Land allotted disregarding statutory requirements, changing land use by modification of Bhopal Development Plan and waiver of substantial portion of the premium - Appellant, a public activist filing PIL against allotment summarily dismissed by High Court - Sustainability -* I *Held, there is no provision in the Act or Rules or Revenue Book Circular*

for allotment of land without issuing advertisement and/or without inviting applications from eligible persons to participate in allotment process - Advertisements issued by State functionaries were only for inviting objections against proposed reservation and/or allotment of land in favour of R-5 Trust and not for participation in process of allotment - All trustees were members of a particular political party and entire exercise was undertaken because political functionaries of State wanted to favour R-5 and officers of State were forced to toe the line of their political masters - Provisions of the Act and Rules have been misinterpreted by State functionaries for several years allotting Nazul land without following any discernible criteria and in complete disregard of constitutional norms - This cannot lead to inference that State Government has framed a well-defined and rational policy for allotment of land to such organisations/ institutions - Unfortunately, High Court overlooked that entire process of reservation of land and allotment was fraught with grave illegality and was nothing but a blatant act of favouritism by State functionaries - Hence, its order set aside - Allotment declared illegal and quashed - Further directions issued to Commissioner, Town and Country Planning, Bhopal to take possession of the land and use it strictly in accordance with Bhopal Development Plan - State Government also directed to refund earnest amount deposited by R-5 - M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (23 of 1973) - Sections 14(a), (b), 15, 17(a), (b), 23A(1) & (2), 25(1), 26 and 58 - M.P. Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 - Rr. 3 to 5 - M.P. Revenue Book Circular - Pt. IV - M.P. Zila Yojana Samiti Adhiniyam, 1995 (19 of 1995) - Trusts and Trustees - M.P. Public Trusts Act 1951 (30 of 1951) - Administrative Law - Administrative Action - Administrative or Executive Function - Misuse of power

[CONSTITUTIONAL LAW] *Government Grants and Largesse - Allotment of land - Plea for perpetuation of illegality based on past practice - Unsustainability - Past practice of allotment of government land without any discernible criteria - Inference of well-defined and rational policy, held, not possible*

Allowing the appeal, the Supreme Court

Held:

There is no provision in the Act or the Rules for disposal and/or transfer of land in respect of which a regional plan or development plan or zonal plan has been prepared. The only provision which has *nexus* with the government land is contained in r. 3 which

imposes a bar against the transfer of government land vested in or managed by the Authority except with the general or special sanction of the State Government. (para 40)

The respondents have not placed on record any document to show that on the date of application, the Memorial Trust was registered as a public trust. Respondent 5 was registered as a public trust only on 6 October 2004 *ie*, after the order for reservation of land in favour of the Memorial Trust was passed. The allotment was also initially made in the name of the Trust, but, later on, the name of respondent 5 was substituted in place of the Memorial Trust. The exercise for reservation of 30 acres of land and allotment of 20 acres was not preceded by any advertisement in the newspaper or by any other recognised mode of publicity inviting applications from organisations/institutions like the Memorial Trust or respondent 5 for allotment of land and everything was done by the political and non-political functionaries of the State as if they were under a legal obligation to allot land to the Memorial Trust and/or respondent 5. The advertisements issued by the State functionaries were only for inviting objections against the proposed reservation and/or allotment of land in favour of the Memorial Trust and not for participation in the process of allotment. (para 69)

Although the objectives of respondent 5 are laudable and the institute proposed to be established by it is likely to benefit an important segment of the society but the fact remains that all its trustees are members of a particular party and the entire exercise for the reservation and allotment of land and waiver of major portion of the premium was undertaken because political functionaries of the State wanted to favour respondent 5 and the officers of the State at different levels were forced to toe the line of their political masters. (para 70)

There is no provision in the Act or the Rules and even in the Madhya Pradesh Revenue Book Circular (RBC) for allotment of land without issuing advertisement and/or without inviting applications from eligible persons to participate in the process of allotment. If there would have been such a provision in the Act or the Rules or the RBC the same could have been successfully challenged on the ground of violation of art. 14 of the Constitution. (para 71)

It does appear that the State and its functionaries have allotted various parcels of land to different institutions and organisations between 1982 to 2008. Large number of these allotments have been made to the departments/establishments of the Central Government/State Governments and their agencies instrumentalities. Some plots have been allotted to the hospitals and charitable institutions, to different political parties, but quite a few have been allotted to the caste/community based bodies. Allotments have also been made without charging premium and at an annual rent of Rs1 only. However, these allotments cannot lead to an inference that the State Government has framed a well-defined and rational policy for allotment of land. (para 72)

The RBC also does not contain any policy for allotment of land without issuing any advertisement and without following a procedure in which all similarly situated persons can stake their claim for allotment. Part IV of the RBC contains the definition of Nazul land and provides for allotment of land at market price or concessional price. The authorities competent to allot land for different purposes have also been identified and provisions have been made for scrutiny of applications at different levels. However, these provisions have been misinterpreted by the functionaries of the State for several years as if the same empowered the authorities concerned to allot Nazul land without following any discernible criteria and in complete disregard to their obligation to act in accordance with the constitutional norms. Unfortunately, the Division Bench of the High Court overlooked that the entire process of reservation of land and allotment thereof was fraught with grave illegality and was nothing but a blatant act of favouritism on the part of functionaries of the State and summarily dismissed the writ petition. (para 73)

Ugar Sugar Works Ltd. v. Delhi Admn. [2001] 3 SCC 635
State of U.P. v. Chaudhari Ran Beer Singh [2008] 5 SCC 550
State of Orissa v. Gopinath Dash [2005] 13 SCC 495 : 2006 SCC (L&S) 1225
Meerut Development Authority v. Assn. of Management Studies [2009] 6 SCC 171 : [2009] 2 SCC (Civ) 803
State of U.P. v. Bansi Dhar [1974] 1 SCC 446
Canbank Financial Services Ltd. v. Custodian [2004] 8 SCC 355, cited
Atul M. Setalvad: Law of Trusts and Charities, Chapter IV, referred to

A The appeal is allowed. The impugned order of the Division Bench of the High Court is set aside and the writ petition filed by the appellant is allowed. The allotment of 20 acres of land to respondent 5 is declared illegal and quashed. The Notifications dated 6 June 2008 and 5 September 2008 issued by the State
B Government under ss. 23A(1)(a) and (2) are also quashed. The Commissioner, Town and Country Planning, Bhopal is directed to take possession of the land and use the same strictly in accordance with the Bhopal Development Plan. The State Government is directed to refund the amount deposited by
C respondent 5. (para 83)

[CONSTITUTIONAL LAW] *Constitution of India - Articles 14, 12, 16, 298 and Preamble & Pt. IV - State as provider of services and benefits - Exercise of discretionary power vested therefor - Held, said*
D *power is required to be used in larger public interest, for public good and without any discrimination - There is no absolute or unfettered discretion - Unfettered discretion is totally incompatible with doctrine of equality and is an antithesis to concept of rule of law - Rule of Law - Government Grants and Largesse - Generally*

E **Held:**

The concept of "State" has changed in recent years. In all democratic dispensations the State has assumed the role of a regulator and provider of different kinds of services and benefits
F to the people like jobs, contracts, licences, plots of land, mineral rights and social security benefits. (para 46)

Ramana Dayaram Shetty v. International Airport Authority of India [1979] 3 SCC 489, relied on
G *MacIver, The Modern State (1964, Paperback Edition), considered*

For achieving the goals of justice and equality set out in the Preamble, Parts III and IV of the Constitution, the State and its agencies/instrumentalities have to function through political entities
H and officers/officials at different levels. The laws enacted by Parliament and the State Legislatures bestow upon them powers for effective implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits
I to the people always has an element of discretion, which is

required to be used in larger public interest and for public good. In principle, no exception can be taken to the use of discretion by the political functionaries and officers of the State and/or its agencies/instrumentalities provided that this is done in a rational and judicious manner without any discrimination against anyone. In our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of rule of law. (paras 50, 47 & 48)

Ramana Dayaram Shetty v. International Airport Authority of India [1979] 3 SCC 489

Padfield v. Minister of Agriculture, Fisheries and Food [1968] AC 997: [1968] 2 WLR 924 : [1968] 1 All ER 694 (CA & HL)

S.G. Jaisinghani v. Union of India, AIR [1967] SC 1427

Erusian Equipment and Chemicals Ltd. v. State of W.B. [1975] 1 SCC 70

Kasturi Lal Lakshmi Reddy v. State of J&K [1980] 4 SCC 1

Common Cause (Petrol pumps matter) v. Union of India [1996] 6 SCC 530

Shrilekha Vidyarthi v. State of U.P. [1991] 1 SCC 212 : [991] SCC (L&S) 742

LIC v. Consumer Education & Research Centre [1995] 5 SCC 482, relied on

Breen v. Amalgamated Engg. Union [1971] 2 QB 175 : [1971] 2 WLR 742 : [1971] 1 All ER 1148 (CA)

Laker Airways Ltd. v. Dept. of Trade [1977] QB 643 : [1977] 2 WLR 234 : [1977] 2 All ER 182 (CA)

V. Punnen Thomas v. State of Kerala, AIR [1969] Ker 81, approved

United States v. Wunderlich, 96 L Ed 113 : 342 US 98 [1951]

R. v. Wilkes [1770] 4 Burr 2527 : (1558-1774) All ER Rep 570 : 98 ER 327

Col. A.S. Sangwan v. Union of India, 1980 Supp SCC 559 : 1981 SCC (L&S) 378, cited

Prof. H.W.R. Wade, Administrative Law, (6th edn.), considered

A.V. Dicey, Law of the Constitution, 10th edn., Introduction ex., cited

[Ed.: See also art. 14, '(d)(5) Arbitrariness and exercise of Discretionary power - Distribution of State largesse/Govt. contracts', pp. 87 et seq., and '(d)(2)(ii) Arbitrariness and exercise of Discretionary power - Discretionary power - Manner of exercise of discretionary power - Requirements and limitations on', pp. 27 et seq. in Vol. 5, Complete Digest of Supreme Court Cases, 2nd edn.]

A ***TOWN PLANNING:*** *Change in land use - Nazul land earmarked in development plan for public and semi-public (health) purpose - Allotment of land by State Government land to Memorial Trust/Institute for establishment of a training institute - Land use changed to public and semi-public purpose by modification of Bhopal Development Plan by issue*
B *of notifications under s. 23-A(1)(a), M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 - Validity of - Held, earmarked land in development plan cannot be used for any purpose other than that for which it is earmarked - No blanket power given to State Government to modify development plan - Power of modification may be exercised only for*
C *specified purposes - State Government modified plan by invoking s. 23A(1)(a) for facilitating establishment of an institute, which was not a specified purpose under s. 23-A(1) - Also, exercise undertaken for change of land use was an empty formality because land had been allotted almost two years prior to issue of notification - Lastly, objects for which*
D *R-5 was registered as a trust have no nexus with purpose for which modification of development plan can be effected under s. 23-A(1) - Hence, modification of development plan was ultra vires s. 23-A(1)(a) - M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (23 of 1973) - Section 23-A(1) - Modification of development plan, held, ultra vires and*
E *illegal (paras 75-79)*

[CONSTITUTIONAL LAW] *Constitution of India - Articles 136, 32 and 226 - Locus standi - PIL - Appeal filed by organisation involved in public welfare activities seeking quashing of allotment of 20 acres of land*
F *by State Government to a Memorial Trust on grounds of violation of art. 14 and arbitrary exercise of power - PIL dismissed by High Court - SLP against - Held, appellant is a public-spirited organisation, has challenged other similar allotments and has locus standi to approach Supreme Court (para 80)*

G *Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi [1987] 1 SCC 227, relied on*

[CONSTITUTIONAL LAW] *Constitution of India - Article 141 - Doctrine of prospective overruling - Land allotted by State Government in*
H *gross violation of art. 14 of the Constitution and found to be an act of favouritism and nepotism - Inapplicability of abovesaid doctrine (para 81)*

S.R. Dass v. State of Haryana [1988] 1 PLR 430 : 1988 PLJ 123, referred to

I *Harsh Dhingra v. State of Haryana [2001] 9 SCC 550, distinguished*

Chronological list of cases cited:

Meerut Development Authority v. Assn. of Management Studies (2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803

State of U.P. v. Chaudhari Ran Beer Singh (2008) 5 SCC 550

State of Orissa v. Gopinath Dash (2005) 13 SCC 495 : 2006 SCC (L&S) 1225

Canbank Financial Services Ltd. v. Custodian (2004) 8 SCC 355

Harsh Dhingra v. State of Haryana (2001) 9 SCC 550

Ugar Sugar Works Ltd. v. Delhi Admn. (2001) 3 SCC 635

Common Cause (Petrol pumps matter) v. Union of India (1996) 6 SCC 530,

New India Public School v. HUDA (1996) 5 SCC 510

Seven Seas Educational Society v. HUDA AIR 1996 P&H 228 : (1996) 113 PLR 17

LIC v. Consumer Education & Research Centre (1995) 5 SCC 482

Shrilekha Vidyarthi v. State of U.P. (1991) 1 SCC 212 : 1991 SCC (L&S) 742

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Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi (1987) 1 SCC 227

Kasturi Lal Lakshmi Reddy v. State of J&K (1980) 4 SCC 1

Col. A.S. Sangwan v. Union of India 1980 Supp SCC 559 : 1981 SCC (L&S) 378

Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489

Laker Airways Ltd. v. Dept. of Trade 1977 QB 643 : (1977) 2 WLR 234 : (1977) 2 All ER 182 (CA)

Erusian Equipment and Chemicals Ltd. v. State of W.B. (1975) 1 SCC 70

State of U.P. v. Bansi Dhar (1974) 1 SCC 446

Breen v. Amalgamated Engg. Union (1971) 2 QB 175 : (1971) 2 WLR 742 : (1971) 1 All ER 1148 (CA)

V. Punnen Thomas v. State of Kerala AIR 1969 Ker 81

Padfield v. Minister of Agriculture, Fisheries and Food 1968 AC 997 : (1968) 2 WLR 924 : (1968) 1 All ER 694 (CA & HL)

S.G. Jaisinghani v. Union of India AIR 1967 SC 1427

United States v. Wunderlich L Ed 113 : 342 US 98 (1951)

R. v. Wilkes (1770) 4 Burr 2527 : (1558-1774) All ER Rep 570 : 98 ER 327

For the appellant - Raju Ramachandran, Senior Advocate (Santosh Kumar, Advocate)

For the respondents - Ravi Shankar Prasad & Ranjit Kumar, Senior Advocates (B.S. Banthia, Vikas Upadhyay, Navin Chawla and Tushar Singh, Advocates)

A

JUDGMENT

GS Singhvi SCJ:

[1] Leave granted. Whether the decision of the Government of Madhya Pradesh to allot 20 acres land comprised in Khasra Nos. 82/1 and 83 of Village Bawadiya Kalan, Tehsil Huzur, District Bhopal to late Shri Kushabhau Thakre Memorial Trust (for short "the Memorial Trust")/Shri Kushabhau Thakre Training Institute (respondent 5) without any advertisement and without inviting other similarly situated organisations/institutions to participate in the process of allotment is contrary to art. 14 of the Constitution and the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam 1973 (for short "the Act") and whether modification of the Bhopal Development Plan and change of land use is *ultra vires* the mandate of s. 23 A of the Act are the questions which arise for consideration in this appeal filed against the order of the Madhya Pradesh High Court dismissing the writ petition filed by the appellant.

[2] That facts necessary for deciding the aforementioned questions have been culled out from the pleadings of the parties and the records produced by the learned counsel for the State. The same are enumerated below: on 18 June 2004, Shri Kailash Joshi made a written request to the Principal Secretary, Housing Department, Government of Madhya Pradesh (for short "the Principal Secretary, Housing") by describing himself as the Convenor of the Memorial Trust for reservation of 30 acres land comprised in Khasra Nos. 83, 85/1 and 85/2 of Village Bawadiya Kalan, in favour of the Memorial Trust to enable it to establish an all-India training institute in the memory of late Shri Kushabhau Thakre.

[3] Although, the letter dated 18 June 2004 was addressed to the Principal Secretary, the same was actually handed over to Shri Babu Lal Gaur, the then Minister, Housing and Environment, Madhya Pradesh. He forwarded the same to the Principal Secretary for immediate action. The latter directed that steps be taken for placing the matter before the Reservation Committee. Simultaneously, letters were issued to the Commissioner-cum-Director, Town and Country Planning, Bhopal (respondent 3) and the Collector, Bhopal (respondent 4) to send their respective reports.

[4] Respondent 3 submitted report dated 8 July 2004 indicating therein that as per the Bhopal Development Plan, land comprised in Khasra Nos. 83 and 85/1 was reserved for residential and plantation purposes and Khasra No. 85/2 was non-government land. After going through the same, the Principal Secretary, Housing opined that land cannot be reserved for the Memorial Trust. However, Shri Rajendra Shukla, State Minister, Housing and Environment recorded a note that he had requested the Coordinator of the Trust to send a revised proposal to the Government and directed that the new proposal be put up before him.

[5] In his report dated 26 July 2004, respondent 4 mentioned that land measuring 11.96 acres comprised in Khasra No. 86 and land measuring 22.06 acres comprised in Khasra No. 85/1 (total area 34.02 acres) was Nazul land and the same was recorded in the name of the State Government and Khasra No. 85/2 belonged to bhoomidar. He also mentioned that the land in question is covered by the Capital Project but there are no trees, religious structure or electricity lines, though a road was proposed by the Town and Country Planning Department.

[6] While the process initiated for reservation of land was at a preliminary stage, Shri Kailash Joshi submitted an application dated 31 July 2004 to the Registrar, Public Trust, Bhopal (for short "the Registrar") under the Madhya Pradesh Public Trusts Act 1951 (for short "the 1951 Act") for registration of a trust in the name of respondent 5 by describing himself and S/Shri M. Venkaiah Naidu, Lal Krishna Advani, Balwant P. Apte and Sanjay Joshi as trustees. In the application, Shri M. Venkaiah Naidu was shown as the first President of the Trust and Shri Kailash Joshi as its Secretary and Managing Trustee. After complying with the procedure prescribed under the 1951 Act, the Registrar passed order dated 6 October 2004 for registration of the Trust. The certificate of registration was issued on 24 December 2004. In the meanwhile, Shri Kailash Joshi sent letter dated 11 August 2004 to the Principal Secretary, Housing by describing himself as Managing Trustee of respondent 5 and submitted fresh proposal for reservation of 30 acres land out of Khasra Nos. 82/1 and 83 of Village Bawadiya Kalan in favour of respondent 5.

A **[7]** By letter dated 20 September 2004, respondent 3 informed the Secretary, Housing and Environment Department (respondent 2) that 4665 acres land of Villages Bawadiya Kalan and Salaiya had already been notified in Madhya Pradesh Gazette dated 2 May 2003 for Town Development Scheme at Misrod. He also B indicated that land in Khasra Nos. 82 and 83 is included in the Scheme and notice to this effect had already been published under s. 50 of the 1973 Act.

[8] After some time, respondent 3 sent letter dated 3 September C 2004 to the Principal Secretary, Housing and pointed out that in the Bhopal Development Plan, 2005, land comprised in Khasra No. 82 of Bawadiya Kalan Village is earmarked for public and semi-public (health) purpose and land comprised in Khasra No. 83 is earmarked for residential purpose. He also indicated that out of D the total area of Khasra No. 83 ie, 11.96 acres, 24 metre wide road is proposed and 33 metres land adjacent to the bank of Kaliasot River is included in the green belt and out of 6 acres land for residential purpose, 2 acres had been reserved for office of the Madhya Pradesh Sanskrit Board and thus, only 4 acres land was E available. He sent another letter dated 21 September 2004 to the Principal Secretary, Housing mentioning therein that use of land comprised in Khasra No. 82/1 of Village Bawadiya Kalan is shown as "health under public and semi-public" in the Bhopal Development Plan, 2005 and use of the land comprised in Khasra F No. 83 is shown as residential and if land is to be allotted to the Memorial Trust, then the earlier land use will be required to be cancelled.

[9] However, without effecting change of land use by following the procedure prescribed under the Act, the State Government G issued order dated 25 September 2004 and reserved 30 acres land comprised in Khasra Nos. 82/1 and 83 of Village Bawadiya Kalan in favour of the Memorial Trust in anticipation of approval by the Land Reservation Committee, which was duly granted. As a sequel to the reservation of land, the Deputy Secretary, H Revenue Department *vide* his letter dated 30 September 2004 directed respondent 4 to immediately send proposal to respondent 3 for allotment of land to the Memorial Trust.

I

[10] In view of the directive issued by the State Government, the Tahsildar, Capital Project (Nazul), Bhopal, on being instructed to do so, issued an advertisement dated 4 October 2004 and invited objections against the proposed allotment of 30 acres land to the Memorial Trust from Khasra Nos. 82/1 and 83 of Village Bawadiya Kalan. The same was published in Dainik Pradesh Times. However just after two days, respondent 4 *vide* his letter dated 8 October 2004 submitted proposal for allotment of 30 acres land to the Memorial Trust. In Para 6 of his letter, respondent 4 clearly indicated that the land falls within the limits of Bhopal Municipal Corporation and, as such, in terms of Chapter IV-1 of the Madhya Pradesh Revenue Book Circular (for short "the RBC"), the same should not be allotted at a price less than the minimum price. He also indicated that price of the land would be Rs7,84,8000, of which 10% should be deposited as a condition for allotment. After 2 1/2 months, respondent 4 sent letter dated 23 December 2004 to the Additional Secretary, Revenue Department and informed him that the Memorial Trust has not deposited 10% of the premium.

[11] On coming to know of the aforesaid communications, Shri Kailash Joshi sent letters dated 19 February 2005 and 20 March 2005 to respondent 4 and the Secretary, Revenue Department respectively and assured that the premium will be deposited immediately after the allotment of land. After about eight months of the submission of proposal for allotment of 30 acres land to the Memorial Trust, Shri Kailash Joshi sent letter dated 16 May 2005 to respondent 4 mentioning therein that the institute would require only 20 acres land. Thereupon, the Nazul Officer, Capital Project, Bhopal sent letter dated 24 June 2005 to Shri Kailash Joshi and informed him that the premium of 20 acres land would be Rs5,22,72,000 and 10% thereof ie, Rs52,27,200 should be deposited as earnest money. However, the needful was not done and only Rs25,00,000 were deposited on behalf of Respondent 5.

[12] For next about seven months, the matter remained under correspondence between different departments of the State Government. During the interregnum, Shri Babu Lal Gaur became the Chief Minister of the State. On 24 October 2005, he directed that the matter relating to allotment of land to respondent 5 be put up in the next meeting of the Cabinet scheduled to be held on 26 October 2005. On the same day, the Secretary, Revenue

A Department submitted a detailed note and suggested that keeping in view the limited resources available with the State Government, land should be auctioned so that the administration may garner maximum revenue. His suggestion was not accepted by the Council of Ministers, which decided to allot 20 acres land in the
B name of the Memorial Trust at the rate of Rs40 lakhs per hectare. The decision of the State Government was communicated to respondent 4 *vide* order dated 27 January 2006.

[13] As a sequel to the allotment of land, the Nazul Officer,
C Capital Project *vide* his letter dated 29 February 2006 called upon Shri Kailash Joshi (Secretary of respondent 5) to deposit Rs55,94,000. However, instead of depositing the amount Shri Kailash Joshi addressed a letter dated 31 March 2006 to the Revenue Minister with the request that the premium may be
D waived because the institute was being established in public interest and will be training the elected representatives and undertaking research on important issues and it will have no source of income. The political set-up of the State Government readily obliged him inasmuch as the issue was considered in the
E meeting of the Council of Ministers held on 9 May 2006 and it was decided that the amount of Rs25,00,000 may be treated as the total premium and land be given to the Memorial Trust by charging annual lease rent of Rs1 only. This decision was communicated to respondent 4 *vide* letter dated 19 June 2006.
F Subsequently, on a representation made by Shri Kailash Joshi, orders/communications dated 25 September 2004, 27 January 2006 and 19 June 2006 were amended and the name of respondent 5 was inserted in place of the Memorial Trust. Thereafter, lease agreement dated 6 January 2007 was executed
G between the State Government and the Secretary of respondent 5 in respect of 20 acres land for a period ending on 5 December 2037 at a premium of Rs25,00,000 and a yearly rent of `1.

[14] Since the use of land comprised in Khasra Nos. 82/1 and
H 83 of Village Bawadiya Kalan was shown in the Bhopal Development Plan as public and semi-public (health) and the same could not have been utilised for the purpose of respondent 5, the State Government issued Notification dated 6 June 2008 under s. 23A(1)(a) of the Act proposing change of land use in respect
I of 19.75 acres land of Khasra No. 82/1(part) of Village Bawadiya Kalan from public and semi-public (health) to public and semi-

public and invited objections/suggestions. The notification was published in the Official Gazette and two newspapers, namely, Dainik Bhaskar and Sandhya Prakash dated 9 June 2008 and 10 June 2008. Five persons representing Bawadiya Uthaan Samiti, "Sangwari", Society for the Resource Companion, Koshish Society, Neeraj Housing Society, Satpura Vigyan Sabha and Swadesh Developers and Colonisers filed their objections against the proposed change of land use. They were given opportunity of hearing by the Deputy Secretary, Housing and Environment Department, who opined that the objections were untenable. Her recommendation was approved by the Secretary, Housing and Environment Department and the Minister concerned. Thereafter, the final Notification dated 5 September 2008 was issued under s. 23A(2) of the Act.

[15] The appellant, who is engaged in public welfare activities in general and consumer welfare in particular and claims to have received awards for good and meritorious performance including Swami Vivekananda Award challenged the allotment of land to respondent 5 in Writ Petition No. 10617 of 2007, on the grounds of violation of art. 14 of the Constitution and arbitrary exercise of power. The Division Bench of the High Court summarily dismissed the writ petition by observing that the land belongs to the Government and it is for the Government to decide to whom the same should be allotted as per its policy and no case of violation of any legal or constitutional right has been made out by the petitioner.

[16] In response to the notice issued by this court, a counter dated 23 March 2010 was filed on behalf of respondents 1 to 4 with an affidavit of Shri Kishore Kanyal, Nazul Officer/SDO, T.T. Nagar, Bhopal. After the arguments were heard on 3 January 2011, an additional affidavit dated 10 January 2011 was filed by Shri Umashankar Bhargav, Nazul Officer, Bhopal giving the details of various proceedings which culminated in the allotment of land to the Memorial Trust, subsequent change in the name of the allottee and change of land use under s. 23A. Along with his affidavit, Shri Umashankar Bhargav enclosed a list showing allotment of land to various institutions, organisations and individuals and copy of order dated 28 October 2009 passed by the Division Bench of the High Court in Writ Petition No. 4088

of 2009. In para. 13 of his affidavit, the deponent made a categorical statement that neither the petitioner nor any member of the public submitted any objection against the proposed change of land use.

[17] On 13 January 2011, the court directed the State Government to file an affidavit to show as to how many allotments have been made at a yearly rent of Rs1. Thereupon, Shri Anil Srivastava, Principal Secretary, Revenue Department, Government of Madhya Pradesh filed an affidavit along with list of 69 institutions and organisations to whom land was allotted at an annual rent of Rs1 only without charging any premium.

[18] After the arguments were concluded, another affidavit of Shri Umashankar Bhargav was filed on 18 January 2011. He tendered apology for making a wrong statement in para. 13 of affidavit dated 10 January 2011 and filed copies of the following documents:

(i) Application dated 18 September 2007 made by Shri Kailash Joshi for erection of building in Khasra No. 82/1, Bawadiya Kalan;

(ii) Letter dated 4 February 2008 sent by respondent 3 to the Principal Secretary, Housing, proposing change of land use of Khasra No. 82/1 (part) from public and semi-public (health) and road to public and semi public and road;

(iii) Paper publications dated 9 June 2008 and 10 June 2008;

(iv) Notice dated 4 August 2008 issued to the objectors;

(v) Note-sheets dated 1 September 2009 and 2 September 2009 of the Housing and Environment Department;

(vi) Letter dated 13 September 2006 sent by respondent 4 to the Principal Secretary, Housing, letter dated 6 October 2006 issued by the State Government for amending memo dated 25 September 2004 and letter dated 2 November 2006 sent by the State Government to respondent 4 for amendment of orders dated 27 January 2006 and 19 June 2006.

[19] The learned counsel for the appellants also placed on record xerox copy of the cover page of Writ Petition No. 933 of 2005 filed by the appellant by way of public interest litigation challenging the allotment of land, which was reserved for park, lawn, parking and open spaces by the Madhya Pradesh Housing Board to the Punjabi Samaj, Bhopal as also a copy of the interim order passed by the High Court whereby the allottee was restrained from raising further construction.

Arguments

[20] Shri Raju Ramachandran, learned Senior Counsel for the appellant, criticised the impugned order and argued that the High Court committed serious error by summarily dismissing the writ petition without examining and adjudicating the important questions of law relating to violation of art. 14 of the Constitution and the provisions of the Act and the Rules. The learned Senior Counsel submitted that the exercise undertaken by the State Government for reservation of land and allotment of a portion thereof to respondent 5 without any advertisement and without adopting a procedure consistent with the doctrine of equality enshrined in art. 14 of the Constitution and waiver of a substantial portion of the premium are acts of gross favouritism and, therefore, the allotment in question should be declared as a nullity.

[21] Shri Ramachandran then argued that the notifications issued by the State Government for change of land use are liable to be quashed because the same are *ultra vires* the provisions of ss. 23A(1) and (2) of the Act. The learned Senior Counsel referred to the Notification dated 6 June 2008 to show that the same did not contemplate modification of the Bhopal Development Plan for any proposed project of the Government of India or the State Government and its enterprise or for any proposed project relevant to development of the State or for implementing a scheme framed by the Town and Country Development Authority (for short "the Authority") and argued that the development plan cannot be modified under s. 23A(1) for the benefit of a private individual, or a group of persons or organisation or institution. The learned Senior Counsel submitted that the notice issued under s. 23A(2) was incomplete inasmuch as the draft modified plan was not published so as to enable the members of public to effectively

oppose the proposed modification of the development plan. In the end, Shri Ramachandran argued that the decision of the State Government to indirectly reserve the land in favour of respondent 5 with retrospective effect is liable to be quashed because as on the date of reservation the said respondent had not been registered as a trust.

[22] Shri Ravi Shanker Prasad, learned Senior Counsel appearing for the State of Madhya Pradesh and other official respondents, challenged the *locus standi* of the appellant on the premise that the averments contained in the writ petition were vague to the core and the High Court rightly refused to entertain the same as a petition filed in public interest. The learned Senior Counsel then referred to the provisions of the Act, the Madhya Pradesh Government Rules of Business, the RBC and argued that the impugned allotment cannot be termed as arbitrary or vitiated due to violation of art. 14 because the State Government has a long-standing policy of allotting land to social, cultural, religious, educational and other similar organisations/institutions without issuing advertisement or inviting applications from the public. In support of this argument, the learned Senior Counsel referred to the list of the allottees annexed with the affidavit dated 10 January 2011 of Shri Umashankar Bhargav.

[23] The learned Senior Counsel relied upon the judgments of this court in *Ugar Sugar Works Ltd. v. Delhi Admn.*[1], *State of U.P. v. Chaudhari Ran Beer Singh*[2], *State of Orissa v. Gopinath Dash*[3] and *Meerut Development Authority v. Assn. of Management Studies*[4] and argued that the court cannot exercise the power of judicial review to nullify the policy framed by the State Government to allot Nazul land without advertisement. Shri Ravi Shanker Prasad referred to para 26 of the RBC and argued that the State Government is possessed with the power to make allotment without charging premium or waive the same.

[24] The learned Senior Counsel then relied upon a passage from Chapter IV of Law of Trusts and Charities by Atul M. Setalvad and the judgments of this Court in *State of U.P. v. Bansi Dhar*[5] and *Canbank Financial Services Ltd. v. Custodian*[6], and argued that intention to create a trust was sufficient for making an application for reservation and allotment of land in favour of respondent 5. He submitted that while making request for reservation of land in

favour of the Memorial Trust, Shri Kailash Joshi had made it clear that the same will be used for establishing a training institute in the name of late Shri Khushabhau Thakre and this was a clear indication to the State Government that a trust will be created for managing the institute.

[25] Shri Ranjit Kumar, learned Senior Counsel appearing for respondent 5, submitted that this Court should not interfere with the impugned allotment because at every stage of the proceedings ie, reservation of land, formation of trust and change of land use, objections were invited from public but at no stage the appellant had filed any objection. The learned counsel extensively referred to the RBC, the provisions of the Act and the Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 (for short "the Rules") and argued that the allotment of land to respondent 5 and change of land use are not vitiated due to violation of any constitutional or legal principle warranting interference by the court.

[26] Shri Ranjit Kumar relied upon ss. 3, 5 and 6 of the Indian Trusts Act 1882 and ss. 2, 4, 5, 6, 8, 11, 32 and 33 of the 1951 Act and argued that intention to create trust was sufficient to enable Shri Kailash Joshi to make applications for reservation and allotment of land in the name of the institute and, in any case, the appellant cannot take advantage of non registration of the trust up to 6 October 2004 because on the date of actual allotment ie, 27 January 2006 the trust stood registered. The learned Senior Counsel also emphasised that once the Trust was registered, the factum of registration will relate back to the date of application ie, 31 July 2004, which was prior to the reservation of land by the State Government.

[27] In the end, Shri Ranjit Kumar submitted that the court may not nullify the impugned allotment at the instance of the appellant because it did not question hundreds of similar allotments made in favour of other organisations/institutions. The learned Senior Counsel also relied upon the judgment of this court in *Harsh Dhingra v. State of Haryana*[7] and argued that the impugned allotment may not be quashed and the law which may be laid down by this court should govern the allotments, which may be made in future.

[28] We have considered the respective submissions. For deciding the questions arising in the appeal, it will be useful to notice the relevant provisions of the Act, the Rules and the RBC.

[29] The Act was enacted to make provisions for planning and development and use of land; to make better provisions for the preparation of development plans and zoning plans with a view to ensure that town planning schemes are made in a proper manner and they are effectively executed. The Act also provides for constitution of Town and Country Development Authority for proper implementation of town and country development plan and for the development and administration of special areas through Special Area Development Authority and also to make provisions for the compulsory acquisition of land required for the purpose of the development plans and for achieving the objects of the Act.

[30] Chapter IV of the Act (ss. 13 to 19) contains provisions relating to planning areas and development plans. Under s. 13(1), the State Government is empowered to constitute planning areas for the purposes of the Act and define limits thereof. In terms of s. 13(2), the State Government can alter the limits of the planning area, amalgamate two or more planning areas, divide any planning area into two or more planning areas and also declare that whole or part of the area constituting the planning area shall cease to be so.

[31] Section 14 casts a duty on the Director of Town and Country Planning to prepare an existing land use map, a development plan and do other activities specified in cls. (d) and (e) of that section. Section 15 contains the procedure for preparation of existing land use map. Section 16 lays down that after publication of the existing land use map under s. 15, no person shall change the use of any land or carry out any development of land for any purpose other than those indicated in the existing land use map without prior permission of the Director. It also lays down that no local authority or any officer or other authority shall grant permission for change in use of land in violation of the existing land use map.

[32] Section 17 (as amended by M.P. Act 8 of 1996) lays down that a development plan shall take into account any draft five-year and annual development plan of the district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 in respect of

the planning area and shall broadly indicate the land use proposed in the planning area; allocate broadly areas or zones of land, keeping in view the regulations of natural hazard prone areas, for residential, industrial, commercial or agricultural purposes; open spaces, parks and gardens, green belts, zoological gardens and playgrounds; public institutions and offices and such special purposes as the Director may consider proper. Other factors enumerated in cls. (c) to (j) are also required to be taken into consideration while preparing a development plan. Section 17-A(1) mandates the constitution of a committee consisting of various persons specified in cls. (a) to (i) thereof. The role of the committee is to hear the objections received after publication of the draft development plan under s. 18 and suggest modifications or alterations, if any.

[33] Section 18 provides for publication of the draft development plan for inviting objections and suggestions from public. The objections and suggestions, if any, received are required to be placed before the committee constituted under s. 17A(1) which shall, after giving opportunity of hearing to the affected persons, suggest appropriate modifications in the draft development plan. After receiving the report of the committee, the Director is required to submit the development plan for approval of the Government. Section 19 provides for approval of the development plan with or without modifications by the State Government. In a given case the State Government can return the development plan with a direction that fresh development plan be prepared. Where the State Government approves the development plan with modification, a notice is required to be published in the gazette inviting objections and suggestions in respect of such modification and final plan is to be published after considering the objections and suggestions, if any, received and giving opportunity of hearing to those desirous of being heard. In terms of sub-section (5) of s. 19 the development plan comes into operation from the date of publication of the notice in the gazette.

[34] Chapter V deals with zoning plan. Section 20 lays down that the local authority may, on its own motion, prepare a zoning plan after publication of the development plan. If the State Government sends a requisition for that purpose then also the local authority is required to prepare a zoning plan. Section 21 specifies the matters which are to be incorporated in the zoning

plan. By virtue of s. 22, the provisions of ss. 18 and 19 have been made applicable for the purpose of preparation, publication, approval and operation of zoning plan. Section 23(1) empowers the Director to undertake a review and evaluation of the development plan either on his own motion or in terms of the directions given by the State Government. Likewise, under s. 23(4) the local authority can undertake review and evaluation of the zoning plan on its own motion or as per the direction of the State Government or the Director. Section 23-A was inserted in the Act by M.P. Act 22 of 1992 and was substituted by M.P. Act 22 of 2005.

[35] In terms of s. 24(1), the overall control of development and use of land in the State vests in the State Government. Section 24(2) lays down that subject to the control of the State Government under sub-section (1) and the Rules made under the Act, the overall control of development and use of land in the planning area shall vest in the Director from the date appointed by the State Government by notification. Sub-section (3) empowers the State Government to make rules to regulate control of development and use of land in planning area. Section 25(1) lays down that after coming into force of the development plan, the use and development of land shall be in accordance with the development plan. Section 26 lays down that after coming into operation of the development plan, no person shall change the use of any land or carry out any development without written permission of the Director. Proviso to this section contains some exceptions in which works can be carried out without prior permission of the Director.

[36] Chapter VII (ss. 38 to 63 A) provides for establishment of Town and Country Development Authority and its status as a body corporate, constitution of the Authority, tenure and remuneration, etc. of the Chairman and the Vice-Chairman, appointment of the Chief Executive Officer and other officers and servants. Section 49 specifies the factors which may be included in a town development scheme. Section 50 regulates preparation of a town development scheme and publication thereof in the gazette, etc. Section 58 empowers the Authority to make regulation for disposal of developed lands, houses, buildings and other structures. This is subject to the rules which may be made by the State Government in this behalf. Section 85, which finds

place in Chapter XI, confers power upon the State Government to make rules for carrying out the purposes of the Acts.

[37] For the sake of reference, ss. 14(a), (b), 15, 17(a), (b), 23A, 25(1), 26 and 58 of the Act are reproduced below:

14. Director to prepare development plans

Subject to the provisions of this Act and the rules made thereunder, the Director shall:

(a) prepare an existing land use map;

(b) prepare a development plan;

15. Existing land use maps

(1) The Director shall carry out the survey and prepare an existing land use map indicating the natural hazard prone areas and, forthwith publish the same in such manner as may be prescribed together with public notice of the preparation of the map and of place or places where the copies may be inspected, inviting objections and suggestions in writing from any person, with respect thereto within thirty days from the date of publication of such notice.

(2) After the expiry of the period specified in the notice published under sub-section (1), the Director may, after allowing a reasonable opportunity of being heard to all such persons who have filed the objections or suggestions, make such modifications therein as may be considered desirable.

(3) As soon as may be after the map is adopted with or without modifications the Director shall publish a public notice of the adoption of the map and the place or places where the copies of the same may be inspected.

(4) A copy of the notice shall also be published in the Gazette and it shall be conclusive evidence of the fact that the map has been duly prepared and adopted.

17. Contents of development plan

A development plan shall take into account any draft five-year and Annual Development Plan of the district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995 (19 of 1995) in which the planning area is situated and shall,

(a) indicate broadly the land use proposed in the planning area;

(b) allocate broadly areas or zones of land, keeping in view the regulations for natural hazard prone areas, for:

(i) residential, industrial, commercial or agricultural, purpose;

(ii) open spaces, parks and gardens, green belts, zoological gardens and playgrounds;

(iii) public institutions and offices;

(iv) such special purposes as the Director may deem fit;

23A. Modification of development plan or zoning plan by State Government in certain circumstances

(1)(a) The State Government may, on its own motion or on the request of a Town and Country Development Authority, make modification in the development plan or the zoning plan for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project related to development of the State or for implementing a scheme of a Town and Country Development Authority and the modification so made in the development plan or zoning plan shall be an integral part of the revised development plan or zoning plan.

(b) The State Government may, on an application from any person or an association of persons for modification of development plan or zoning plan for the purpose of undertaking an activity or scheme which is considered by the State Government or the Director, on the advice of the Committee constituted by the State Government for this purpose, to be beneficial to the society, make such modification in the development plan or zoning plan as may be deemed necessary in the circumstances of the case and the modification so made in the development plan or zoning plan shall be an integral part of the revised development plan or zoning plan.

(2) The State Government shall publish the draft of modified plan together with a notice of the preparation of the draft modified plan and the place or places where the copies may be inspected, continuously for two days in such two daily newspapers which are in the approved list of Government for advertisement purpose having circulation in the area to which it relates and a copy thereof shall be

affixed in a conspicuous place in the office of the Collector, inviting objections and suggestions in writing from any person with respect thereto within fifteen days from the date of publication of such notice.

After considering all the objections and suggestions as may be received within the period specified in the notice and shall, after giving reasonable opportunity to all persons affected thereby of being heard, the State Government shall confirm the modified plan.

(3) The provisions of Sections 18, 19 and 22 shall not apply for modification made by the State Government.

25. Conformity with development plan

(1) After the coming into force of the development plan, the use and development of land shall conform to the provisions of the development plan:

Provided that the Director may, as its discretion, permit the continued use of land for the purpose for which it was being used at the time of the coming into operation of the development plan:

Provided further than such permission shall not be granted for a period exceeding seven years from the date of coming into operation of the development plan.

26. Prohibition of development without permission

After the coming into operation of the development plan, no person shall change the use of any land or carry out any development of land without the permission in writing of the Director:

Provided that no such permission shall be necessary -

(a) for carrying out works for the maintenance, repair or alteration of any building which does not materially alter the external appearance of the building;

(b) for carrying out of work for the improvement or maintenance of a highway, road or public street by the Union or State Government or an authority established under this Act or by a local authority having jurisdiction, provided that such maintenance or improvement does not change the road alignment contrary to the provisions of the development plan;

A (c) for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cables, telephone or other apparatus including the breaking open of any street or other land for that purpose;

B (d) for the excavation or soil-shaping in the interest of agriculture;

(e) for restoration of land to its normal use where land has been used temporarily for any other purposes;

C (f) for use, for any purpose incidental to the use of building for human habitation, or any other building or land attached to such building;

(g) for the construction of a road intended to give access to land solely for agricultural purposes:

D Provided further that in a planning area to which rules made under sub-section (3) of Section 24 are made applicable, such permission may be given by such authority as may be provided in the said rules.

E **58. Disposal of land, buildings and other development works.**

Subject to such rules as may be made by the State Government in this behalf, the Town and Country Development Authority shall, by regulation, determine the procedure for the disposal of developed lands, houses, buildings and other structures.

F **[38]** In exercise of the powers conferred upon it under s. 58 read with s. 85, the State Government framed the Rules. Rule 3 declares that no government land vested in or managed by the Authority shall be transferred except with the general or special sanction of the State Government. Rule 4 lays down that all other G land ie, "the Authority land" shall be transferred in accordance with the following Rules. Rule 5 prescribes four modes of transfer of the Authority land. These are:

5 (a) By direct negotiations with the party; or

H (b) By public auction; or

(c) By inviting tenders; or

(d) Under concessional terms.

I

[39] Rules 5A to 27 enumerate the steps required to be taken for transfer of land by different modes. Rule 28 lays down that transfer of the Authority land under r. 27 shall be made on such terms and conditions as may be fixed by the Authority. Rules 29 to 48 provide for matters ancillary to the transfer of the Authority land ie, execution of lease, payment of rent by the transferee, etc.

[40] What is significant to be noted is that there is no provision in the Act or the Rules for disposal and/or transfer of land in respect of which a regional plan or development plan or zonal plan has been prepared. The only provision which has *nexus* with the government land is contained in r. 3 which, as mentioned above, imposes a bar against the transfer of government land vested in or managed by the Authority except with the general or special sanction of the State Government.

[41] We may now notice the relevant provisions of the RBC some of which have been relied upon by the learned Senior Counsel appearing for the respondents to justify the reservation and allotment of land in favour of respondent 5. Part IV of the RBC deals with the management and regulation of Nazul land falling within the limits of municipal corporations, municipal councils and notified areas; and transfer thereof by lease, sale, etc. Para 12 of this part lays down that Nazul land can be disposed of by way of permanent lease, temporary lease, on bedawa karar, annual licence and also by transfer to the State Administration and department of any other State Government or the Government of India or by vesting in any local authority. In terms of para 13(1), permanent lease can be granted either by auction or without auction. Para 13(2) enumerates the contingencies in which permanent lease cannot be granted by auction. These include when the land in question is used for religious, educational, cooperative, public or social purposes. Para 14 provides for reservation of the plots which are sold with the approval of the State Government on the conditions separately decided for each such plot.

[42] Paragraph 17 specifies the authorities who are competent to pass orders in respect of Nazul land. Under this paragraph, the power to grant lease of Nazul land for educational institutions, playgrounds, hospitals and other public purposes on concessional rate as also the power to grant lease of Nazul land for 30 years

A or less with a right of renewal vests with the State Government, if the mode of disposal is otherwise than auction. The residuary power also vests with the State Government. Paragraph 18 lays down that a petition can be submitted to the higher authority against any order which may be passed by an officer subordinate
B to the State Government. Paragraph 19 lays down that every application for permanent lease of Nazul land should be made to the District Collector along with the relevant documents, maps, etc. Under para 20, the Collector is empowered to reject the application by recording reasons. If the application is not rejected
C then the Collector has to adopt the procedure specified in cls. (a), (b), (c), (d), (e) and (f) of this paragraph. If the plot of land is to be sold by auction then the same is required to be advertised or publicised by a recognised method.

D **[43]** Paragraph 21 prescribes the mode of auction of lease rights. Any persons, desirous of participating in the auction is required to deposit 10% of the premium. Once the bid is approved by the competent authority, the bidder has to deposit the balance amount within 30 days. This paragraph also provides for forfeiture
E of the premium and recovery of the amount from the defaulter. Paragraph 23 specifies the minimum premium for different categories of plots. Paragraph 24 lays down the procedure to be followed for disposal of plot without auction. If any plot is proposed to be transferred at a concessional premium then the
F approval of the State Government is *sine qua non*. In case, the Collector is satisfied that the plot of land should be given without auction then the allottee is required to pay premium equivalent to average market price determined on the basis of the sale instances of last five years. In terms of para 25, the Collector is required to
G submit report to the Commissioner or to the Government through the Commissioner after scrutiny of the matter at different stages.

[44] Paragraph 26 lays down that when Nazul land is allotted to non governmental organisations or persons on favourable terms
H then the conditions specified therein should be scrupulously observed and there should be rigorous scrutiny of the proposal. Under this paragraph, land can be allotted to educational, cultural and philanthropic institutions/organisations or cooperative societies, Housing Board and Special Area Authority constituted by the
I State Government. However, unregistered societies and private

trusts are not eligible for allotment of land. This paragraph also contemplates allotment of land for religious purposes or to Jain temple, mosque, church, gurdwara, etc. provided that there is no similar place within two kilometres of the site proposed to be allotted. Clauses (1)(a) and (b) of this paragraph prescribe the premium required to be paid by different types of bodies and institutions. Clause (3) prescribes the condition relating to construction of the building and cl. (5) provides for resumption of land in certain eventualities. By Circular No. 6/16/91/Sat/SA/2 B, the Government prescribed the revised rates for allotment of Nazul land to caste and non-caste based social, religious and philanthropic organisations, the organisations engaged in welfare of women, educational and cultural organisations, public hospitals, cooperative societies, Agriculture Market Committee, municipal corporation, etc. By Circular No. F.6-173/96/Sat/SA/2 B/Nazul dated 31 May 1996, the State Government prescribed the premium and rent to be charged for allotment of land to caste based and social institutions. By Circular No. F 6 140/07/SAT/ Nazul dated 31 August 2007, the State Government decided to allot land without charging any premium at an annual rent of `1 for housing schemes meant for slum-dwellers.

[45] We shall now consider whether the State Government could allot 20 acres of land to respondent 5 without issuing an advertisement or adopting a procedure consistent with the doctrine of equality so as to enable other similar organisations/institutions to participate in the process of allotment.

[46] The concept of "State" has changed in recent years. In all democratic dispensations the State has assumed the role of a regulator and provider of different kinds of services and benefits to the people like jobs, contracts, licences, plots of land, mineral rights and social security benefits. In his work The Modern State, MacIver (1964, Paperback Edition) advocated that the State should be viewed mainly as a service corporation. He highlighted difference in perception about the theory of State in the following words:

> To some people State is essentially a class structure, 'an organisation of one class dominating over the other classes'; others regard it as an organisation that transcends all classes and stands for the whole community. They regard it as a power system. Some view it entirely as a legal structure, either in the old Austinian sense which made it a relationship of Governors and

A governed, or, in the language of modern jurisprudence, as a community 'organised for action under legal rules'. Some regard it as no more than a mutual insurance society, others as the very texture of all our life. Some class the State as a great 'corporation' and others consider it as indistinguishable from society itself.

B

[47] When the Constitution was adopted, the people of India resolved to constitute India into a sovereign democratic republic. The words "socialist" and "secular" were added by the Constitution (Forty-second Amendment) Act 1976; and also to C secure to all its citizens justice social, economic and political, liberty of thought, expression, belief, faith and worship; equality of status and/or opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. The expression "unity of the nation" was D also added* by the Constitution (Forty second Amendment) Act 1976. The idea of a welfare State is ingrained in the Preamble of the Constitution. Part III of the Constitution enumerates fundamental rights, many of which are akin to the basic rights of every human being. This part also contains various positive and E negative mandates which are necessary for ensuring protection of the fundamental rights and making them real and meaningful.

[48] Part IV contains "directive principles of State policy" which are fundamental in the governance of the country and it is the F duty of the State to apply these principles in making laws. Article 39 specifies certain principles of policy which are required to be followed by the State. Clause (b) thereof provides that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community G are so distributed as best to subserve the common good. Parliament and legislatures of the States have enacted several laws and the Governments have, from time to time, framed policies so that the national wealth and natural resources are equitably distributed among all sections of people so that have-nots of the H society can aspire to compete with haves.

[49] The role of the Government as provider of services and benefits to the people was noticed in *Ramana Dayaram Shetty v. International Airport Authority of India*[8] in the following words: (SCC I p. 504, para 11)

> 11. Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with the Government. The Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges.

[50] For achieving the goals of justice and equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and the State Legislatures bestow upon them powers for effective implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good. In principle, no exception can be taken to the use of discretion by the political functionaries and officers of the State and/or its agencies/instrumentalities provided that this is done in a rational and judicious manner without any

discrimination against anyone. In our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of the rule of law.

[51] In his work *Administrative Law* (6th edn.) Prof. H.W.R. Wade highlighted the distinction between powers of public authorities and those of private persons in the following words:

> The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely-that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms.

Prof. Wade went on to say:

> **... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.**
>
> There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law; it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration: it operates wherever discretion is given for some public purpose, for example where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.
>
> For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere. (emphasis added)

[52] *Padfield v. Minister of Agriculture, Fisheries and Food*, is an important decision in the area of administrative law. In that case the Minister had refused to appoint a committee to investigate the complaint made by the members of the Milk Marketing Board that majority of the Board had fixed milk prices in a way that was unduly unfavourable to the complainants. The Minister's decision was founded on the reason that it would be politically embarrassing for him if he decided not to implement the committee's decision.

[53] While rejecting the theory of absolute discretion, Lord Reid observed: (*Padfield* case[9], QB p. 1030, B-D)

> … Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.

[54] In *Breen v. Amalgamated Engg. Union*[10], Lord Denning MR said: (QB p. 190, B-C)

> … The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food*[9] which is a landmark in modern administrative law.

[55] In *Laker Airways Ltd. v. Dept. of Trade*[11] Lord Denning discussed prerogative of the Minister to give directions to Civil Aviation Authorities overruling the specific provisions in the statute in the time of war and said: (QB p. 705, F-G)

> Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive.

[56] This court has long ago discarded the theory of unfettered discretion. In *S.G. Jaisinghani v. Union of India*[12], Ramaswami, J emphasised that absence of arbitrary power is the foundation of a system governed by rule of law and observed: (AIR p. 1434, para 14)

> 14. In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey, *Law of the Constitution,* 10th Edn., Introduction ex.). 'Law has reached its finest moments', stated Douglas, J in *United States v. Wunderlich*[13], 'when it has freed man from the unlimited discretion of some ruler … Where discretion is absolute, man has always suffered'. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in *John Wilkes*[14], 'means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful.'

[57] In *Ramana Dayaram Shetty v. International Airport Authority of India*[8], Bhagwati, J referred to an article by Prof. Reich "The New Property" which was published in 73 Yale Law Journal 733. In the article, the learned author said, "that the Government action be based on standards that are not arbitrary or unauthorised". The learned judge then quoted with approval the following observations made by Mathew, J (as he then was) in *V. Punnen Thomas v. State of Kerala*[15]: (*Ramana Dayaram Shetty* case[8], SCC p. 505, para 12)

> 12. … '19 … the Government is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to the restraints inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.*

[58] Bhagwati, J also noticed some of the observations made by Ray, CJ in *Erusian Equipment and Chemicals Ltd. v. State of W.B.*[16] who emphasised that when the Government is trading with public the democratic form of the Government demands equality and absence of arbitrariness and discrimination in such transactions and held: (*Ramana Dayaram Shetty* case[8], SCC p. 506, para 12)

> 12. … This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. *The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.* (emphasis added)

[59] In *Kasturi Lal Lakshmi Reddy v. State of J&K*[17], Bhagwati J speaking for the court observed: (SCC pp. 13-14, para 14)

> 14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government *cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.* Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of

people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the court under the Constitution to invalidate the governmental action. This is one of the most important functions of the court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of *mala fides* though it may, in a given case, furnish evidence of *mala fides*. (emphasis added)

[60] In *Common Cause (Petrol pumps matter) v. Union of India*[18] the two-Judge Bench considered the legality of discretionary powers exercised by the then Minister of State for Petroleum and Natural Gas in the matter of allotment of petrol pumps and gas agencies.

While declaring that allotments made by the Minister were wholly arbitrary, nepotistic and motivated by extraneous considerations the Court said: (SCC p. 553, para 22)

> 22. The Government today-in a welfare State-provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences, etc. Government distributes largesse in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesse. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people.

[61] The court also referred to the reasons recorded in the orders passed by the Minister for award of dealership of petrol pumps and gas agencies and observed: (*Common Cause* case[18], SCC p. 554, para 24)

> 24. … While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/ procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment.

[62] In *Shrilekha Vidyarthi v. State of U.P.*[19] the court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed: (SCC pp. 236, 239-40, paras 21, 28 & 29)

A 21. … We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

28. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty v. International Airport Authority of India*[8] and *Kasturi Lal Lakshmi Reddy v. State of J&K*[17].) In *Col. A.S. Sangwan v. Union of India*[20], while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.

[63] Similarly, in *LIC v. Consumer Education & Research Centre*[21], the court negatived the argument that exercise of executive power of the State was immune from judicial review and observed: (SCC pp. 498 & 500, paras 23, 27 & 28)

> 23. Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element (*sic* that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simpliciter, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations.
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> 26. This Court has rejected the contention of an instrumentality or the State that its action is in the private law field and would be immuned from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any straitjacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law filed cannot be demarcated with precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated.
>
> 27. In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner ie, fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest.

[64] In *New India Public School v. HUDA*[22], this court approved the judgment of the Division Bench of the Punjab and Haryana High Court in *Seven Seas Educational Society v. HUDA*[23], whereby allotment of land in favour of the appellants was quashed and observed: (New India Public School case[22], SCC p. 515, para 4)

> 4. A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired by HUDA for public purpose. One of the modes of transfer of property as indicated in sub-section (3) of Section 15 read with sub-regulation (c) of Regulation 5 is public auction, allotment or otherwise. When public authority discharges its public duty the word 'otherwise' would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. It would depend upon the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be predetermined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers; otherwise, the salutary procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law.

[65*] What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

[66*] We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/ instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/ instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in art. 14 of the Constitution.

[67*] This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with art. 14 of the Constitution.

[68*] The allotment of land by the State or its agencies/ instrumentalities to a body/organisation/institution which carry the tag of caste, community or religion is not only contrary to the idea of secular democratic republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favouritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.

[69] We may now revert to the facts of this case. Admittedly, the application for reservation of land was made by Shri Kailash Joshi, in his capacity as the Convenor of the Memorial Trust. The respondents have not placed on record any document to show that on the date of application, the Memorial Trust was registered as a public trust. During the course of hearing also no such document was produced before the court. It is also not in dispute that respondent 5 was registered as a public trust only on 6 October 2004 ie, after the order for reservation of land in favour of the Memorial Trust was passed. The allotment was also initially made in the name of the Trust, but, later on, the name of respondent 5 was substituted in place of the Memorial Trust. The exercise for reservation of 30 acres land and allotment of 20 acres was not preceded by any advertisement in the newspaper or by any other recognised mode of publicity inviting applications from organisations/institutions like the Memorial Trust or respondent 5 for allotment of land and everything was done by the political and non-political functionaries of the State as if they were under a legal obligation to allot land to the Memorial Trust and/or respondent 5. The advertisements issued by the State functionaries were only for inviting objections against the proposed reservation and/or allotment of land in favour of the Memorial Trust and not for participation in the process of allotment. Therefore, it is not possible to accept the argument of Shri Ranjit Kumar that land was allotted to respondent 5 after following a procedure consistent with art. 14 of the Constitution.

[70] Although, the objectives of respondent 5 are laudable and the institute proposed to be established by it is likely to benefit an important segment of the society but the fact remains that all its trustees are members of a particular party and the entire exercise for the reservation and allotment of land and waiver of major portion of the premium was undertaken because political functionaries of the State wanted to favour respondent 5 and the officers of the State at different levels were forced to toe the line of their political masters.

[71] At the cost of repetition, we consider it necessary to reiterate that there is no provision in the Act or the Rules and even in the RBC for allotment of land without issuing advertisement and/or without inviting applications from eligible persons to participate in the process of allotment. If there would

have been such a provision in the Act or the Rules or the RBC the same could have been successfully challenged on the ground of violation of art. 14 of the Constitution. A

[72] The argument of Shri Ravi Shanker Prasad that the impugned allotment may not be annulled because the State has a definite policy of allotting land to religious, social, educational and philanthropic bodies, organisations/institutions without any advertisement or inviting applications and without even charging premium is being mentioned only to be rejected. From the lists annexed with the affidavits of Shri Umashankar Bhargav and Shri Anil Srivastava it does appear that the State and its functionaries have allotted various parcels of land to different institutions and organisations between 1982 to 2008. Large number of these allotments have been made to the departments/establishments of the Central Government/State Governments and their agencies/ instrumentalities. Some plots have been allotted to the hospitals and charitable institutions. Some have been allotted to different political parties, but quite a few have been allotted to the caste/ community based bodies. Allotments have also been made without charging premium and at an annual rent of Rs1 only. In our view, these allotments cannot lead to an inference that the State Government has framed a well-defined and rational policy for allotment of land. B C D E

[73] The RBC also does not contain any policy for allotment of land without issuing any advertisement and without following a procedure in which all similarly situated persons can stake their claim for allotment. Part IV of the RBC contains the definition of Nazul land and provides for allotment of land at market price or concessional price. The authorities competent to allot land for different purposes have also been identified and provisions have been made for scrutiny of applications at different levels. However, these provisions have been misinterpreted by the functionaries of the State for several years as if the same empowered the authorities concerned to allot Nazul land without following any discernible criteria and in complete disregard to their obligation to act in accordance with the constitutional norms. Unfortunately, the Division Bench of the High Court overlooked that the entire process of reservation of land and allotment thereof was fraught with grave illegality and was nothing but a blatant act of favouritism on the part of functionaries of the State and summarily dismissed the writ petition. F G H I

[74] The next question which needs consideration is whether Notifications dated 6 June 2008 and 5 September 2008 by which the Bhopal Development Plan was modified are *ultra vires* the provisions of s. 23A of the Act.

[75] A reading of the provisions contained in Chapter IV of the Act makes it clear that a development plan shall take into account the draft five year and annual development plan of the district, if any, prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam and broadly indicate the land use proposed in the planning area, allocation of areas or zones of land for residential, industrial, commercial or agricultural purpose; open spaces, parks and gardens, green belts, zoological gardens and playgrounds; public institutions and offices and other special purposes as the Director may deem it fit. The development plan shall also lay down the pattern of national and State highways connecting the planning area with the rest of the region, ring roads, arterial roads and the major roads within the planning area, etc.

[76] The development plan prepared under Chapter IV is the foundation of development of the particular area for a specified number of years. No one can use land falling within the area for which the development plan has been prepared for a purpose other than for which it is earmarked. Section 23A was inserted in 1992 and amended in 2005 with a view to empower the State Government to modify the development plan or zoning plan. However, keeping in view the basic objective of planned development of the areas to which the Act is applicable, the legislature designedly did not give blanket power to the State Government to modify the development plan. The power of modification of development plan can be exercised only for specified purposes.

[77] In terms of s. 23A(1)(a), the development plan can be modified by the State Government either *suo motu* or at the request of the Authority for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementing a scheme of the Authority. Under cl. (b), the State Government can entertain an application from any person or association of persons for modification of development plan for the purpose of undertaking any activity or scheme which is considered by the State Government or the Director, on the advice of the

committee constituted for this purpose, to be beneficial to the society. This is subject to the condition that the modification so made shall be an integral part of the revised development plan.

[78] Section 23A(2) provides for issue of public notice inviting objections against the proposed modification of the plan. Such notice is required to be published along with the modified plan continuously for two days in two daily newspapers which are on the list of the Government and which have circulation in the area. A copy of the notice is also required to be affixed in a conspicuous place in the office of the Collector. After considering the objections and suggestions, if any received, and giving reasonable opportunity of hearing to the affected persons, the State Government can confirm the modification.

[79] It is not in dispute that in the Bhopal Development Plan, the use of land which was reserved and allotted to respondent 5 was shown as public and semi-public (health). The State Government modified the plan by invoking s. 23A(1)(a) of the Act for the purpose of facilitating establishment of an institute by respondent 5 and not for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementation of the Town Development Scheme. As a matter of fact, the exercise undertaken for the change of land use, which resulted in modification of the development plan was an empty formality because land had been allotted to respondent 5 almost two years prior to the issue of Notification under s. 23A(1)(a) and the objects for which respondent 5 was registered as a trust have no *nexus* with the purpose for which modification of development plan can be effected under that section. Therefore, there is no escape from the conclusion that modification of the development plan was *ultra vires* the provisions of s. 23A(1)(a) of the Act.

[80] The challenge to the *locus standi* of the appellant merits rejection because it has not been disputed that the appellant is a public-spirited organisation and has challenged other similar allotment made in favour of Punjabi Samaj, Bhopal, That apart, as held in *Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi*[24] even if a person files a writ petition for vindication of his private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the court to enquire into the matter.

[81] The argument of Shri Ranjit Kumar that the doctrine of prospective overruling should be invoked and the allotment made in favour of respondent 5 may not be quashed sounds attractive but cannot be accepted because we have found that the impugned allotment is the result of an exercise undertaken in gross violation of art. 14 of the Constitution and is an act of favouritism and nepotism. The judgment in *Harsh Dhingra v. State of Haryana*[7] on which reliance was placed by Shri Ranjit Kumar is clearly distinguishable. In that case the court had noted that plots had been allotted by the Chief Minister out of his discretionary quota in the backdrop of an earlier judgment of the Division Bench of the High Court in *S.R. Dass v. State of Haryana*[25] and several allottees had altered their position.

[82] In view of the above discussion, we do not consider it necessary to deal with the argument of Shri Ravi Shanker Prasad and Shri Ranjit Kumar that the land could have been allotted to the Memorial Trust even though it has not been registered as a trust under the 1951 Act or the Indian Trusts Act.

[83] In the result, the appeal is allowed. The impugned order of the Division Bench of the High Court is set aside and the writ petition filed by the appellant is allowed. The allotment of 20 acres land to respondent 5 is declared illegal and quashed. The Notifications dated 6 June 2008 and 5 September 2008 issued by the State Government under ss. 23A(1)(a) and (2) are also quashed. The Commissioner, Town and Country Planning, Bhopal is directed to take possession of the land and use the same strictly in accordance with the Bhopal Development Plan. The State Government is directed to refund the amount deposited by respondent 5 within a period of 15 days from today.

Endnotes:

1. (2001) 3 SCC 635.
2. (2008) 5 SCC 550.
3. (2005) 13 SCC 495 : 2006 SCC (L&S) 1225.
4. (2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803.
5. (1974) 1 SCC 446.
6. (2004) 8 SCC 355.
7. (2001) 9 SCC 550.

* Ed.: The Constitution (Forty-second Amendment) Act 1976 substituted the words "unity of the nation" with "unity and integrity of the nation."

8. (1979) 3 SCC 489 : AIR 1979 SC 1628 : (1979) 3 SCR 1014
9. 1968 AC 997 : (1968) 2 WLR 924 : (1968) 1 All ER 694 (CA & HL)
10. (1971) 2 QB 175 : (1971) 2 WLR 742 : (1971) 1 All ER 1148 (CA)
11. 1977 QB 643 : (1977) 2 WLR 234 : (1977) 2 All ER 182 (CA)
12. AIR 1967 SC 1427.
13. 96 L Ed 113 : 342 US 98 (1951).
14. *R. v. Wilkes*, (1770) 4 Burr 2527 : (1558-1774) All ER Rep 570 : 98 ER 327: 8 (1979) 3 SCC 489.
15. AIR 1969 Ker 81.

* As observed in *V. Punnen Thomas v. State of Kerala*, AIR 1969 Ker 81, p. 90, para 19.

16. (1975) 1 SCC 70.

8 *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489

17. (1980) 4 SCC 1 : AIR 1980 SC 1992 : (1980) 3 SCR 1338.
18. (1996) 6 SCC 530.
18. *Common Cause (Petrol pumps matter) v. Union of India,* (1996) 6 SCC 530.
19. (1991) 1 SCC 212 : 1991 SCC (L&S) 742.

8. (1979) 3 SCC 489.

17. (1980) 4 SCC 1
20. 980 Supp SCC 559 : 1981 SCC (L&S) 378 : AIR 1981 SC 1545
21. (1995) 5 SCC 482
22. (1996) 5 SCC 510
23. AIR 1996 P&H 228 : (1996) 113 PLR 17

* Ed.: Paras 65, 66 and 68 corrected *vide* Official Corrigendum No. F.3/Ed.B.J./23/2011 dated 3 May 2011 and para 67 corrected *vide* Official Corrigendum No. F.3/Ed.B.J./28/2011 dated 7 May 2011.

24. (1987) 1 SCC 227

7. (2001) 9 SCC 550

25. (1988) 1 PLR 430 : 1988 PLJ 123